

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

GLORIA GARNICA)	
Claimant)	
VS.)	
	)	Docket No. 255,807
DILLON COMPANIES, INC.)	
Respondent)	
Self-Insured)	
TAMARA PIPER)	
Claimant)	
VS.)	
	)	Docket No. 214,480
YMCA)	
Respondent)	
AND)	
)	
FIREMAN'S FUND INSURANCE CO.)	
Insurance Carrier)	
GLEN A. UNREIN)	
Claimant)	
VS.)	
	)	Docket No. 231,826
BIG CREEK TOWNSHIP)	
Respondent)	
AND)	
)	
HARTFORD ACCIDENT & INDEMNITY)	
Insurance Carrier)	
JACK UTTERBACK)	
Claimant)	
VS.)	
	)	Docket No. 248,512
EATON CORPORATION)	
Respondent)	
Self-Insured)	

MICHAEL CAGLE)	
Claimant)	
VS.)	
	)	Docket No. 253,426
HAY & FORAGE INDUSTRIES)	
Respondent)	
Self-Insured)	
CATHY HICKS)	
Claimant)	
VS.)	
	)	Docket No. 251,920
HUTCHINSON CLINIC, P.A.)	
Respondent)	
AND)	
)	
CINCINNATI INSURANCE COMPANY)	
Insurance Carrier)	
DARLA CONKLIN)	
Claimant)	
VS.)	
	)	Docket No. 251,153
SPARTECH CORPORATION)	
Respondent)	
AND)	
)	
TRAVELERS INSURANCE COMPANY)	
Insurance Carrier)	
CHARLENE GARCIA)	
Claimant)	
VS.)	
	)	Docket No. 245,195
HUBCO, INC.)	
Respondent)	
AND)	
)	
ST. PAUL FIRE & MARINE INSURANCE CO.)	
Insurance Carrier)	

CINDY A. PYL)	
Claimant)	
VS.)	
	)	Docket No. 242,548
NORCRAFT COMPANY, INC.)	
Respondent)	
AND)	
)	
GENERAL INSURANCE CO. OF AMERICA)	
Insurance Carrier)	
 RAMONA ANKERHOLZ)	
Claimant)	
VS.)	
	)	Docket No. 255,466
ALCOA AEROSPACE CENTER)	
Respondent)	
AND)	
)	
LIBERTY MUTUAL INSURANCE CO.)	
Insurance Carrier)	
 JASON HICKS)	
Claimant)	
VS.)	
	)	Docket No. 255,190
ACME BRICK COMPANY)	
Respondent)	
AND)	
)	
ST. PAUL FIRE & MARINE INSURANCE CO.)	
Insurance Carrier)	

ORDER

Claimant appeals the Orders of Administrative Law Judge Bruce E. Moore wherein claimant's request for the Administrative Law Judge to be recused from the above matters was denied. These cases were consolidated for oral argument to the Board. Oral

argument was held in Wichita, Kansas, on January 12, 2001. Appeals Board Member David A. Shufelt recused himself from these proceedings. Bryce A. Abbott was appointed Appeals Board Member Pro Tem to replace Mr. Shufelt.

APPEARANCES

All the above claimants were represented by Wichita, Kansas, attorney, Roger A. Riedmiller. Respondent Big Creek Township and its insurance carrier Hartford Accident & Indemnity, respondent Hubco, Inc., and its insurance carrier St. Paul Fire & Marine Insurance Company, respondent Hay & Forage Industries, a self-insured, and respondent Acme Brick Company and its insurance carrier St. Paul Fire & Marine Insurance Company were represented by Larry Shoaf of Wichita, Kansas. Respondent Spartech Corporation and its insurance carrier Travelers Insurance Company were represented by Jeffrey E. King of Salina, Kansas. Respondent Norcraft Company, Inc., and its insurance carrier General Insurance Company of America were represented by Matthew J. Thiesing, appearing for Clifford K. Stubbs of Lenexa, Kansas.

Respondent and insurance carriers in Hicks v. Hutchinson Clinic, P.A., and Cincinnati Insurance Company, and Ankerholz v. Alcoa Aerospace Center, and Liberty Mutual Insurance Company, appeared not as the Board was advised at the oral argument those matters had been settled between the parties and all issues removed from Board consideration. Respondent YMCA and its insurance carrier Fireman's Fund Insurance Company appeared not but did file a brief through their attorney, Richard A. Boeckman of Great Bend, Kansas. There were no other appearances.

RECORD AND STIPULATIONS

The Appeals Board has adopted the stipulations of the parties in the above matters. The record consists of the pleadings and other documents filed with the Division of Workers Compensation in the above docketed claims.

ISSUES

- (1) What is the jurisdiction of the Workers Compensation Board to consider an Administrative Law Judge's refusal to recuse himself from a claim?

- (2) Did the Administrative Law Judge err in refusing to recuse himself from the above matters?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Board upon claimant's appeal from the Order by the Administrative Law Judge refusing to recuse himself as the judge in the above cases. This dispute between claimant's counsel and the Administrative Law Judge first arose in Crone v. Great Bend Cooperative Association and Farmland Mutual Insurance Company, Docket No. 239,263.

In Crone, claimant's counsel filed pleadings requesting that the Judge recuse himself in that matter as well as requesting a blanket recusal of the Judge from all matters involving counsel Riedmiller.

That refusal by the Administrative Law Judge to recuse himself was considered both by the Workers Compensation Board and by the Director of Workers Compensation in separate appeals.

The recusal requests in the above claims were then filed by Mr. Riedmiller. Again, Judge Moore refused to recuse himself from the proceedings, denying claimant's motions. The matters were again appealed to both the Workers Compensation Board and to the Director.

In his Memorandum Decision of January 10, 2001, Workers Compensation Director Philip S. Harness denied claimants' motion, finding no evidence to support claimants' contentions that Judge Moore was subject to bias or prejudice in dealing with matters wherein claimants' counsel represented various claimants. The Director noted that blanket recusals are not favored in the law and that the affidavits filed by the various claimants and claimants' counsel were not sufficient to support the request for a blanket recusal.

The Appeals Board will first consider its jurisdiction to hear this matter. Neither the Kansas Workers Compensation Act, K.S.A. 44-501 *et seq.*, nor the Director's Rules, K.A.R. 51-1-1 *et seq.*, provide for a procedure to address a party's request for recusal or to address allegations of bias and prejudice on the part of an administrative law judge. The recusal issue has been considered by the Board on at least two prior occasions. In Hawk v. Rubbermaid-Winfield, Inc. and American Manufacturers Mutual Insurance and the Kansas Workers Compensation Fund, WCAB Docket No. 180,303 (March 1994), the Board was asked to consider a claimant's attorney's request to remove a certain administrative law judge from all cases filed by that particular claimant's attorney. The

Board refused to accept jurisdiction of the matter, finding it lacked authority to order an administrative law judge to recuse himself from a claim as it had no supervisory authority over an Administrative Law Judge. The Board found that authority rested with the Workers Compensation Director. A more detailed analysis is found in Boyd v. Presbyterian Manors of Mid-America, Inc. and the Workers Compensation Fund, WCAB Docket No. 163,905 (September 1997).

K.S.A. 44-555c states:

(a) There is hereby established the workers compensation board. The board shall have exclusive jurisdiction to review all decisions, findings, orders and awards of compensation of administrative law judges under the workers compensation act. The review by the board shall be upon questions of law and fact as presented and shown by a transcript of the evidence and the proceedings as presented, had and introduced before the administrative law judge.

K.S.A. 44-534a states:

(a)(2) . . . A finding with regard to a disputed issue of whether the employee suffered an accidental injury, whether the injury arose out of and in the course of the employee's employment, whether notice is given or claim timely made, or whether certain defenses apply, shall be considered jurisdictional, and subject to review by the board.

Additionally, K.S.A. 44-551(b)(1) (Furse), at the time Boyd was decided, described the Appeals Board's authority, in pertinent part, as follows:

. . . All acts, findings, awards, decisions, rulings or modifications of findings or awards made by an administrative law judge shall be subject to review by the board upon written request of any party within 10 days. . . . On any such review, **the board shall have authority to grant or refuse compensation, or to increase or diminish any award of compensation or to remand any matter to the administrative law judge for further proceedings.** (Emphasis added.)

Since the issuance of the Boyd decision, K.S.A. 44-551 has been amended to read:

All final orders, awards, modifications of awards, or preliminary awards under K.S.A. 44-534a and amendments thereto made by an administrative law

judge shall be subject to review by the board upon written request of any interested party within 10 days.

That amendment to K.S.A. 44-551, rather than expanding the Board's jurisdiction to hear cases, appears to limit even more the Board's review of administrative decisions.

In both Hawk and Boyd, the Board found its jurisdiction generally limited to issues relating to the awarding of benefits, the compensability issues surrounding the claims for benefits, and certain ancillary matters directly affecting those claims. The Board does not have the jurisdiction or authority to order an administrative law judge to recuse himself or herself from a proceeding, the authority to remove an administrative law judge from a proceeding or the authority to order the reassignment of a claim.

K.S.A. 44-523 specifically provides that the right to assign a matter to a different administrative law judge, to an assistant director or to a special administrative law judge lies with the Director of Workers Compensation. The decision to reassign a matter may follow a request by one of the parties or "on the director's own motion." The authority to decide which administrative law judge will be assigned which case also rests with the Director of the Division of Workers Compensation as the authority in charge of the Division's administrative law judges. The Director's decisions are then reviewable by the District Court and subject to appellate review pursuant to the Administrative Procedure Act, K.S.A. 77-501 *et seq.*

The Appeals Board finds it does not have the jurisdiction or authority to order the removal of an administrative law judge or to order an administrative law judge to recuse himself from a proceeding.

The Appeals Board finds this matter is more properly before the Director of the Division of Workers Compensation.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that claimant's request for review of the Orders of Administrative Law Judge Bruce E. Moore refusing to recuse himself from the above matters should be, and is hereby, dismissed.

IT IS SO ORDERED.

Dated this ____ day of March 2001.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Roger A. Riedmiller, Wichita, KS
 Scott J. Mann, Hutchinson, KS
 Richard A. Boeckman, Great Bend, KS
 P. Kelly Donley, Wichita, KS
 Edward D. Heath, Jr., Wichita, KS
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 Clifford K. Stubbs, Lenexa, KS
 Douglas M. Greenwald, Kansas City, KS
 Vincent Burnett, Wichita, KS
 Bruce E. Moore, Administrative Law Judge
 Philip S. Harness, Director